



**Operations Support Services Division**  
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March 18, 2008

## **AGENDA ITEM 5**

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE**

**I. SUBJECT:** Committee Recommendation: Proposed Amendments to Board of Administration Election Regulations

**II. PROGRAM:** Administration

**III. RECOMMENDATION:**

Staff recommends that the Committee approve the proposed modified amendments to Title 2 of the California Code of Regulations, Section 554.2, Notice of Election and Section 554.3, Nomination of Candidates, in the form set forth in Attachment B, and recommend adoption to the full Board.

**IV. ANALYSIS:**

On February 2, 2007, the Office of Administrative Law (OAL) published a final determination in response to a petition concerning underground regulations filed in July 2006. OAL determined certain CalPERS Board election forms and procedures constituted underground regulations pursuant to the Administrative Procedure Act (APA).

CalPERS Board election procedures at issue, as identified by OAL, are as follows:

- Notice of Election – schedule
- Nomination Petition – minimum signature requirements
- Nomination Petition – Social Security number and other signature verification requirements

The Legal Office recommended that CalPERS promulgate several amendments to the existing regulations.

At the June 2007 Benefit and Program Administration Committee (BPAC), the proposed amendments to regulations Sections 554.2 and 554.3 were presented and discussed. The Committee recommended beginning the regulatory process. The following day, the Board concurred with the Committee's recommendation. A Notice of Proposed Regulatory Action was published in the *California Regulatory Notice Register* (CRNR) 2007, No 28-Z, July 13, 2007. The 45-day written comment period for the proposed regulatory action closed on August 27, 2007. A public hearing was noticed for September 11, 2007, at 9:00 AM.

At the September 2007 BPAC meeting, the Committee conducted the public hearing as noticed. The September BPAC agenda item, including the Notice of Proposed Regulatory Action, the originally proposed regulatory language for 554.2 and 554.3, Initial Statement of Reasons and the written comments received by CalPERS during the initial 45-day public comment period are included as Attachment A. At the conclusion of the public hearing, staff modified its recommendation to BPAC concerning the adoption of the proposed amendments. In response, BPAC adopted the following motion that was approved by the full Board: *Refine the proposed amendments based on written and oral public comments, and once those changes are made, to hold an additional public comment period as required by the Administrative Procedure Act. Recommended final language to the Committee for Board adoption at a future meeting of the Board after conclusion of the comment period.*

## **V. DISCUSSION:**

At the direction of the Board, staff refined the proposed amendments to incorporate the written and oral comments submitted by the interested public deemed to be pertinent. A 15-day Notice of Modification to Text of Proposed Regulations was prepared, noticed, and distributed, per the Administrative Procedure Act. Sections 554.2 and 554.3 as modified and the 15-day notice are included as Attachment B. The 15-day comment period was January 18, 2008 thru February 1, 2008. No written comments were submitted to the modifications to the proposed amendments by the noticed deadline.

If the Committee, and subsequently the Board, decides to adopt the proposed modified amendments to the regulations as recommended, the rulemaking file will be completed and forwarded to OAL for review and approval. Once OAL has approved the proposed amendments, it will be forwarded to the Secretary of State for filing and publication in the California Code of Regulations. The regulations will become effective 30 days after filing with the Secretary of State.

**VI. STRATEGIC PLAN:**

This item is not a specific product of the Strategic Plan, but is part of the regular and ongoing workload of the Operations Support Services Division.

**VII. RESULTS/COSTS:**

These amendments will not be implemented until the 2009 Member-At-Large election. There are no costs associated with these Board Election regulation amendments.

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Rick Nelson, Chief  
Operations Support Services Division

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John Hiber  
Assistant Executive Officer  
Administrative Services Branch